IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRTIT PETITION NO. 4061 (MS) OF 2001

(Old No. 32933/92)

1. Shri Kalidas Mandal,
   S/o Shishu Dhar Mandal,
2. Shri Sheo Pad Mandal, S/o Shishu Dhar Mandal,
   R/o Village Radhakantpur, Tehsil-Gadarpur,
   Distt. Nainital. .....Petitioners.

Versus

1. District Judge, Nainital.
2. Prescribed Authority Additional Sub Divisional Officer, Nainital.
3. State of U.P., through Collector, Nainital.

.....Respondents.

Dated: 05.04.2006

Hon'ble Rajesh Tandon, J.

Heard Sri S.K. Mandal, Advocate for the petitioner and Standing Counsel for the respondents no. 1 to 3.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the orders dated 03.04.1992 and 20.09.1990 passed by the respondents no. 1 and 2. Further prayer has been made for a writ of mandamus staying the impugned orders dated 03.04.1992 and 20.09.1990 restraining the respondents not to evict the petitioners from the land in dispute.

Appeal was filed against the order dated 20.09.1990 passed by the Prescribed Authority, Rudrapur, District- Nainital (Now Udham Singh Nagar) under Section 5 of Uttar Pradesh Public Premises (Eviction of Unauthorised

Occupants) Act, 1972 in Eviction Case No.221168-1984-85 *State versus Kalidas, Shiv Pad Mandal*, contained in Annexure No.2 to the writ petition. Notice was issued to the petitioner under Section 4 (1) of the Act, requiring him to show cause as to why he be not evicted from the plot Nos. 87/2 2/2 area 6 Bighas and 87/26/2 area 12 ½ Bigha situate in Village Radha Kantpur, Tehsil Gadarpur, Distt. Nainital.

Prescribed Authority has passed the order of eviction. Petitioner has preferred the appeal which was rejected as time barred and accordingly the same was dismissed. Petitioner has prepared the present writ petition.

Learned counsel for the petitioner has relied upon the judgment dated 16.09.2005 passed in ***Writ Petition No. 1052 (M/S) of 2001Shri Upkar Singh Vs. State of Uttar Pradesh and others*** and has contended that the proceeding relating to disputed land could not have been initiated under the Uttar Pradesh (Eviction of Unauthorised Occupants) Act. If the petitioner was unauthorized occupant on any portion of land belonging to State, the proceeding under Section 122-B of U.P. Zamindari Abolition And Land Reforms Act, 1950 could be drawn against him, as the land held by a tenure holder for the time being is not a public premises.

5. The definition of **'land'** as defined under Sec.3 (14) of the U.P. Zamindari Abolition And Land Reforms Act, 1950 reads as under:-

> **"Land"** means land held or occupied for purposes connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming."

Section 2(b) defines the public premises as under:-

"2(b) **'Premises'** means any land (including any forest land or trees standing thereon, or covered by water, or a road maintained by the State Government or land appurtenant to such road) or any building or part of a building and includes-

(i) the garden, grounds and outhouses, if any, appurtaining to such building or part of a building, and

(ii) any fittings or fixtures affixed to or any furniture supplied with such building or part of a building for the more beneficial enjoyment thereof,

but does not include land which for the time being is held by a tenure-holder under any law relating to land tenures;"

"2(e) **'public premises'** means any premises belonging to or taken on lease or requisitioned by or on behalf of the State Government, and includes any premises belonging to or taken on lease by or on behalf of-

(i) any company as defined in Section 3 of the Companies Act, 1956, in which not less than fifty-one per cent of the paid up share capital is held by the State Government; or

(ii) any local authority; or

(iii) any Corporation (not being a company as defined in Section 3 of the Companies Act, 1956 or a local authority) owned or controlled by the State Government; or

(iv) any society registered under the Societies Registration Act, 1860, the governing body whereof consists, under the rules or regulations of the society, wholly or public officers, or nominees of the State Government, or both; and also includes-

(i) Nazul land or any other premises entrusted to the management of a local authority (including any building built with Government funds on land belonging to the State Government after the entrustment of the land to that local authority, not being land vested in or entrusted to the management of a Gaon Sabha or any other local authority under any law relating to land tenures);

(ii) any premises acquired under the land Acquisition Act, 1894 with the consent of the State Government for a company (as defined in that Act) and held by that company under an agreement executed under Section 41 of that Act providing for re-entry by the State Government in certain conditions;"

Therefore, a conjoin reading of the definitions given under the Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 of the **'premises'** and **'public premises'** clearly exclude the application of the provisions of the U.P. Public Premises (Eviction of Unauthorised Occupants) Act in case a tenure holder holds the land for the time being.

A writ of certiorari is issued quashing the order-dated 03.04.1992 passed by the respondent no.1.

Since the appeal has not been decided on merits, the matter is sent back to the appellate Court for deciding afresh on merits in the light of the observations made above.

Writ petition is allowed. No order as to costs.

(RAJESH TANDON, J.)

05.04.2006
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